

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RENARDO ROBERTSON, an individual;  
and RENARDO and DONNA ROBERTSON,  
and their marital community,

CASE NO. 2:22-cv-00827  
ORDER

**Plaintiffs,**

V.

CATHOLIC COMMUNITY SERVICES OF  
WESTERN WASHINGTON, a Washington  
public benefit corporation; D. Michael Reilly,  
an individual; Shirley S. Lou-Magnuson, an  
individual; Rodney R. Moody, an individual,

#### Defendants.

This matter comes before the Court on Defendants D. Michael Reilly and Shirley S. Lou-Magnuson's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12 (Dkt. # 27) and Plaintiff's Motion for Leave of Court to File Second Amended Complaint (Dkt. # 41). The Court has reviewed the materials submitted in support of, and in opposition to, the motions, as well as the case file.

Being fully advised, the Court GRANTS the motion to dismiss and DENIES the motion for leave to amend.

## Motion to Dismiss

Subject matter jurisdiction constitutes a threshold issue regarding the court's power to

1 hear a case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). It covers  
 2 statutory grants of original jurisdiction, such as federal question jurisdiction under 28 U.S.C. §  
 3 1331.

4 A motion to dismiss for lack of subject matter jurisdiction may be facial or factual. *Safe*  
 5 *Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In resolving a facial attack,  
 6 such as here, the challenger must persuade the court that the allegations of the complaint are  
 7 insufficient on their face to invoke the jurisdiction of the court. *See id.* However, “[t]he party  
 8 invoking federal jurisdiction must bear the burden of establishing” that jurisdiction exists. *Lujan*  
 9 *v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

10 The First Amended Complaint (Dkt. # 8) says that there is federal question jurisdiction  
 11 in this matter. Yet, for presumably all the claims it asserts against all the defendants (including  
 12 non-movants), it lists the following as “federal statutes, federal treaties, and/or provisions of the  
 13 United States Constitution” at issue: “18 U.S.C. § 2071; 18 U.S.C. § 1519; Federal Rules of Civil  
 14 Procedure 60(b)(3); and 28 U.S.C. § 1927; Fed. R. Civ. P. 15(a).” (emphasis in original).  
 15 Neither Rule 15(a) nor Rule 60(b)(3) constitutes a federal statute, treaty, or constitutional  
 16 provision; these are rules of court procedure. 18 U.S.C. § 2071 and 18 U.S.C. § 1519 are  
 17 criminal statutes that do not establish subject matter jurisdiction in this civil case. And 28 U.S.C.  
 18 § 1927 does not provide a federal cause of action that would establish such jurisdiction. Nor  
 19 does the pleading otherwise set forth a basis for federal question jurisdiction with respect to any  
 20 of the claims against any of the defendants.<sup>1</sup> Thus, the movants appear correct that this Court

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 22       <sup>1</sup> While not all the defendants joined in the motion to dismiss on subject matter jurisdiction  
 23 grounds, the movants’ arguments inure to the benefit of all the defendants. And a federal court is  
 24 obligated to “police” its subject matter jurisdiction on a continuing basis throughout a matter to ensure it  
 remains “within the bounds the Constitution and Congress have prescribed.” *Ruhrgas AG v. Marathon*  
*Oil Co.*, 526 U.S. 574, 583 (1999); *see also Mashiri v. Dep’t of Educ.*, 724 F.3d 1028, 1031 (9th Cir.  
 2013) (“[F]ederal courts have a continuing, independent obligation to determine whether subject matter

1 lacks subject matter jurisdiction. And accordingly, the Court does not reach the other issues  
 2 raised by the motion to dismiss.

3           Motion for Leave to Amend

4           The proposed Second Amended Complaint (Dkt. # 41-1) suffers from the same  
 5 deficiencies outlined above in connection with the First Amended Complaint. For example, with  
 6 respect to federal question jurisdiction, it repeats the citations to “18 U.S.C. § 2071; 18 U.S.C. §  
 7 1519; Federal Rules of Civil Procedure 60(b)(3); and 28 U.S.C. § 1927; Fed. R. Civ. P. 15(a).”  
 8 And it does not otherwise set forth a basis for federal question jurisdiction with respect to any of  
 9 the claims against any of the defendants. Thus, the motion for leave to amend is futile. *See*  
 10 *Sonoma Cnty, Ass'n of Retired Emps.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (dismissal without  
 11 leave to amend is proper if amendment would be futile). Likewise, the Court does not see how,  
 12 given the nature of the allegations against the non-movant Defendants, any additional amended  
 13 complaint could cure the lack of subject matter jurisdiction.

14           Conclusion

15           For the above reasons, the Court GRANTS the motion to dismiss and DENIES the  
 16 motion for leave to amend. This matter is DISMISSED without prejudice. And the Court  
 17 STRIKES as moot the other pending motions in this matter (Dkts. ## 35, 39, and 51).

18           Finally, the Court understands that Plaintiffs are *pro se*, may not have been familiar with  
 19 the legal standards discussed above, and based on their other filings, may be disappointed that  
 20 this case is being dismissed before certain discovery takes place. The Court hopes that Plaintiffs  
 21 now understand that, as mentioned above, subject matter jurisdiction is a threshold issue

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 24 jurisdiction exists.”) (citing *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 975 n. 12 (9th  
 Cir. 2012)).

1 regarding the court's power to hear a case, and the Court should not allow such discovery if it  
2 lacks subject matter jurisdiction.

3 Dated this 24th day of October, 2022.

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5 John H. Chun

6 John H. Chun  
7 United States District Judge

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